

mg

March 16, 1998

Ms. Agnes Larson, Program Director  
New York State Department of Health  
Office of Professional Medical Conduct  
145 Huguenot Street, 8th Floor  
New Rochelle, New York 10801

RE: DR. LOUIS ROH

Dear Ms. Larson:

During a recent homicide trial conducted in the Dutchess County Court, Dr. Louis Roh, a Board Certified Forensic Pathologist, appeared as an expert witness for the defense. In this case, Dr. Roh, testified as a private physician but professionally holds employment as the Deputy Chief Medical Examiner in Westchester County.

As part of his testimony, Dr. Roh made certain remarks which the presiding County Court Judge, Thomas Dolan, found very disturbing; I concur with his assessment. Certainly ethical and professional responsibility require of a public servant the highest degree of candor, whether testifying in that capacity or not, and it is for that reason that I am bringing this matter to your attention.

As enclosures to this correspondence, I have provided you with certain portions of Dr. Roh's testimony in the Dutchess County case. That testimony occurred in January of 1998. Within that testimony, reference is made to a letter written by Orange County District Attorney Francis Phillips; I have enclosed a copy of that correspondence as well. I have also provided you with relevant portions of Dr. Roh's testimony as transcribed from a trial that took place on November 12, 1997 in Orange County Court before the Hon. Jeffrey G. Berry. A member of my staff has spoken personally with the presiding Judge, the Judge's Law Clerk, the prosecutor and the defense attorney in the Orange County case and confirmed that Dr. Roh was actually shown a copy of the letter in question and provided with an opportunity to read it as appears in the record of the trial proceedings. Also

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Ms. Agnes Larson, Program Director  
Office of Professional Medical Conduct  
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enclosed are copies of two (2) newspaper articles authored by Paula McMahon, a reporter with the *Middletown Times Herald Record*. Ms. McMahon had discussed the issue of this letter with Dr. Roh on at least one occasion after the November 12, 1997 appearance in Orange County Court.

It should be noted that in both the Orange County case and the Dutchess County case, the Court permitted inquiry and cross-examination regarding the underlying incident referenced in Mr. Phillips' letter. However, given the circumstances, while Dr. Roh's denying knowledge of the letter and his effort to avoid any knowledge of its contents, would not constitute perjury, I believe it does constitute a serious breach of his ethical and professional responsibility to truthfully answer the questions posed to him while under oath without regard for the potential professional embarrassment.

This information is being provided to you for whatever action you deem appropriate under the circumstances.

Very truly yours,

WILLIAM V. GRADY  
District Attorney

wmu  
Enclosures - 5

ROH000029

mg

March 16, 1998

Ms. Agnes Larson, Program Director  
New York State Department of Health  
Office of Professional Medical Conduct  
145 Huguenot Street, 6th Floor  
New Rochelle, New York 10801

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As part of his testimony, Dr. Roh made certain remarks which the presiding County Court Judge, Thomas Dolan, found very disturbing; I concur with his assessment. Certainly ethical and professional responsibility require of a public servant the highest degree of candor, whether testifying in that capacity or not, and it is for that reason that I am bringing this matter to your attention.

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WILLIAM V. GRADY  
District Attorney

wmu  
Enclosures - 5

ROH000029

Nov 09 07 03:33p  
11/09/2007 14:14

Charles V. Wetli, M.D. 201-750-8221

P. 2

**COUNTY OF SUFFOLK**



**ROBERT J. GAFFNEY**  
SUFFOLK COUNTY EXECUTIVE  
DEPARTMENT OF HEALTH SERVICES  
**Clare B. Bradley, M.D. M.P.H.**  
COMMISSIONER

**DIVISION OF MEDICAL-LEGAL INVESTIGATIONS &  
FORENSIC SCIENCES  
SIDNEY S. WEINBERG CENTER  
FOR FORENSIC SCIENCES**

ACCREDITED BY ABFT, ABCDLA & NAME

**CHARLES V. WETLI, M.D.**  
CHIEF MEDICAL EXAMINER

July 16, 2001

Re: Dr. Louis Roh

New York State Department of Health/OPMC  
Attention: "Intake"  
433 River Street  
Suite 303  
Troy, New York 12180

Dear Sir or Madam:

Earlier this year, Dr. Louis Roh testified for the defense in a homicide trial (People v Charles Bodenburg) held in Suffolk County, New York. The victim, Kayla Zachman, was a three year old girl who had consumed an alcoholic beverage (supposedly, Amaretto). The defendant subsequently caused the death of this child. The autopsy, performed by Dr. Stuart Dawson, revealed head trauma with diffuse axonal injury, typical for the "Whiplash Shaken Infant Syndrome"; other aspects of the investigation lead to the conclusion that smothering was also a factor. Toxicologic analysis revealed a blood alcohol concentration of 0.03% and a brain alcohol concentration of 0.01%. (Note: A serum alcohol concentration of 0.05% was determined on a blood sample taken in the hospital Emergency Room - serum levels are slightly higher than whole blood).

It would not be unexpected for a defense pathologist to challenge the mechanism of the brain injury, and the conclusion that smothering was a component in the death. However, Dr. Roh testified that alcohol poisoning was the cause of death (despite the fact that diffuse axonal injury, regardless of cause, is a lethal injury). He supported his conclusion by "his experience" and subsequently by an article (attached) where he neglected to mention that the blood alcohol concentration reported in that child was determined more than seven hours after ingestion.

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Nov 09 07 03:33p

Charles V. Wetli, M.D.

201-750-8221

p.3

In our opinion, Dr. Roh's testimony went far beyond what would be expected of a defense expert and that his testimony was misleading and had no reasonable basis in fact. In this case, Dr. Dawson provided direct testimony for the state. Dr. Wetli and Dr. Briglia provided rebuttal testimony and cited the medical and toxicologic literature which indicates children may survive extremely high levels of alcohol (two articles enclosed).

Attached for your consideration are the three articles mentioned above, the autopsy report, neuropathology report and toxicology report. Enclosed is the Trial Transcript of Dr. Roh's testimony and the Summation of the Assistant District Attorney.

Should you need additional documents, information or clarification, please contact Dr. Wetli. Thank you for looking into this matter

Sincerely,

Charles V. Wetli, M. D.  
Chief Medical Examiner

Stuart L. Dawson, M. D.  
Deputy Chief Medical Examiner

Edward J. Briglia, Ph. D.  
Chief, Toxicology Laboratory

CVW/sig

Cc: (Without enclosures): Dr. Clare B. Bradley, Suffolk County Health Commissioner  
Ms Georgia Tschember, Assistant District Attorney  
Mr. Robert Cabbie, Assistant County Attorney

FORENSIC SCIENCES BLDG. #407  
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ROH000002

**ORIGINAL**

1 SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

2 -----X

ADMINISTRATION PROCEEDING  
3 IN THE MATTER OF

FILE NO.  
#074/2003

4  
5 ANIELA WALKER a/k/a ANE LA WALKER,  
a/k/a ANIELE WALKER,

6  
Decedent.

7 -----X

8 Surrogate Court  
140 Grand Street  
9 White Plains, New York  
October 31, 2003  
10 9:30 a.m.  
11  
12  
13  
14

15 Continued examination before  
16 trial of a NON-PARTY WITNESS, LOUIS ROH, M.D.,  
17 held pursuant to Subpoena, at the above time  
18 and place, before a Notary Public of the  
19 State of New York.  
20

21  
22 SULLIVAN REPORTING  
388 Tarrytown Road  
23 White Plains, New York 10607  
(914) 949-4545  
24  
25

1    A P P E A R A N C E S :

2                    PISCIONERE & NEMAROW, P.C.  
3                    Attorneys for Petitioner  
4                    363 Boston Post Road  
5                    Rye, New York 10580  
6                    BY: ANTHONY PISCIONERE, ESQ.

7                    GEORGE LAMBERT,  
8                    Public Administrator  
9                    SCHUMAN, SALL & GEIST, ESQS.  
10                    One North Lexington Avenue  
11                    White Plains, New York 10601  
12                    BY: IVAN LAWNER, ESQ.

13                    RABIN, PANERO & HERRICK, ESQS.  
14                    Attorneys for Objectants  
15                    44 Church Street  
16                    White Plains, New York 10601  
17                    BY: MATTHEW D. SCHWARZ, ESQ.

18                    ALSO PRESENT:

19                    JAMES McCARTY, ESQ.

20  
21  
22  
23  
24  
25



- Louis Rob, M.D. -

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1 the nose in the areas where you observed the  
2 abrasions, would that be consistent?

3 A. No, it's not consistent.

4 Q. Why not?

5 A. That's my opinion.

6 Q. Didn't you testify a few minutes ago  
7 that those injuries, those abrasions to the nose  
8 were consistent with a fingernail scrapping the  
9 nose?

10 A. That's what I said. It's not consistent  
11 with pinching the nose.

12 Q. Doctor, I am asking you to assume for  
13 purposes of our question. The question I am about  
14 to ask you; when Mr. Spruill went to pinch the  
15 decedent's nose that he also scratched her nose  
16 with his fingernail, are the injuries you observed  
17 consistent with him having scratched her, if he  
18 did scratch her, when he pinched her nose?

19 A. If he scratched her five times in the  
20 back of the nose, yes.

21 Q. Doctor, the records of testimony that  
22 you say you keep, those are on index cards?

23 A. No.

24 Q. Didn't you testify, Doctor, that you  
25 keep records of all the cases that you testify on?

- Louis Roh, M.D. -

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1 A. No, autopsies I do.

2 Q. Doctor, do you recall testifying in this  
3 case in your deposition testimony that you keep  
4 records of every case that you testify on and that  
5 you have those records for more than five years of  
6 your testimony?

7 A. I don't recall.

8 Q. Doctor, let's refer your attention to  
9 your deposition --

10 A. If I did I am wrong. I don't keep it.

11 Q. You don't keep it, Doctor?

12 A. The testimony record, no.

13 Q. Let's go back to your deposition  
14 transcript and see if that refreshes your  
15 recollection, Doctor?

16 A. If I said I did it, that was wrong.

17 Q. Doctor, let me refresh your recollection  
18 first.

19 MR. SCHWARZ: He didn't say his  
20 recollection needed to be refreshed.

21 Q. Deposition transcript, October 20, 2003,  
22 Page 51 -- starting at Page 50, Line 22:

23 "Question: Doctor, I am talking about  
24 the cases that you testified on. Do you keep some  
25 records regarding those cases?

- Louis Roth, M.D. -

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1 "Answer: Yes, I do."

2 Continuing on Page 51:

3 "Question: What type cases or what  
4 cases do you keep those records on?

5 "Answer: I do make a little index card  
6 for the case testifying, but it doesn't go back to  
7 1970.

8 "Question: How far back does it go?

9 "Answer: I don't recall.

10 "Question: Does it go back more than  
11 five years?

12 "Answer: Yes

13 "Question: Is that for each and every  
14 case you testified on for the last five years or  
15 more?

16 "Answer: Yes.

17 "Question: Whether you testified for  
18 the prosecution or the defense?

19 "Answer: That's correct.

20 "Question: Does it include information  
21 like the name of the case?

22 "Answer: Yes.

23 "Question: Name of the attorney?

24 "Answer: Yes, and the judge."

25 That's it. Do you recall giving

- Louis Roh, M.D. -

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1 those --

2 A. Sometimes I do, yes.

3 Q. So you do have index cards in the cases  
4 you testified for?

5 A. Yes.

6 Q. Do you keep those in your office at the  
7 medical examiner's office?

8 A. No.

9 Q. Where do you keep them?

10 A. I throw them out.

11 Q. Wait a second. We just asked you these  
12 questions and answers if you had the records and  
13 you said you did?

14 A. Some I throw out; some I keep.

15 Q. The ones you keep, where do you keep  
16 them?

17 A. In my office.

18 Q. Up at the Medical Examiner's office?

19 A. That's correct.

20 Q. On index cards?

21 A. Index cards, yes.

22 Q. Doctor, I'm going to ask you at your  
23 next deposition to produce those cards that you  
24 kept on the cases that you testified to. I'm  
25 going to ask you to preserve those from this day

- Louis Roh, M.D. -

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1 forward and not to throw out any other cases.

2 A. I don't have it.

3 Q. What do you mean you don't have it?

4 A. I don't have index cards. I only have  
5 index cards of the autopsy.

6 Q. Your deposition transcript is very clear  
7 when you testified in this case on October 20,  
8 2003, that you kept index cards for each and every  
9 case that you testified on for the last five years  
10 or more, whether you testified for the  
11 prosecution --

12 A. I said --

13 Q. Let me finish, Doctor -- whether you  
14 testified for the prosecution or the defense and  
15 that it included information of the name of the  
16 case, name of the attorney and the judge. In  
17 fact, you even added in "Yes, and the judge," in  
18 your answer.

19 Is it your testimony today that you  
20 don't maintain such cards?

21 A. Yeah, it's been thrown out.

22 Q. When?

23 A. After the testimony.

24 Q. It is your testimony, Doctor, that  
25 between October 20, 2003 and today's date, which

- Louis Roh, M.D. -

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1 is October 31, 2003, you have thrown out all these  
2 cards that you testified you kept?

3 A. Yes, I did.

4 Q. Doctor, do you understand the concept of  
5 perjury?

6 A. Yes, I do.

7 Q. Where did you throw the cards out,  
8 Doctor?

9 A. In the garbage.

10 Q. Which garbage; at the office or did you  
11 take them home to throw them out?

12 A. No, in the office.

13 Q. Did you give them to anybody before you  
14 threw them out?

15 A. No, I just put them in the garbage.

16 Q. How big were these cards; how much space  
17 did they take up?

18 A. A regular garbage bin.

19 Q. How much space did the cards take up,  
20 more than one file draw?

21 A. No, a few.

22 Q. How few?

23 A. I would say maybe 20, 30.

24 Q. Doctor, you testified that you testified  
25 in over 300 cases, didn't you?

- Louis Roh, M.D. -

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1           A.    No, I didn't say that I save all the  
2   index cards.

3           Q.    That's not my question. In this case  
4   haven't you said in your deposition that you have  
5   testified in over 300 cases?

6           A.    My answer is, I do not have index cards,  
7   not now.

8           Q.    That's not my question, Doctor. Did you  
9   give deposition testimony in this case that you  
10   have testified in over 300 cases?

11          A.    Yes, I did.

12          Q.    How many cases are you telling us now  
13   that you have maintained index cards for?

14          A.    Maybe 20, 30.

15          Q.    Is it your testimony that between  
16   October 20 and October 31 of 2003 you destroyed  
17   those 20 or 30 records of testimony?

18          A.    Yes, I did.

19          Q.    Can you tell us the reason you did that,  
20   Doctor?

21          A.    Because I didn't want to get subpoena.

22          Q.    You thought that those records might be  
23   subpoenaed by us in connection with this case?

24          A.    That's correct.

25          Q.    And as a result you willfully destroyed

- Louis Roh, M.D. -

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1 those records?

2 A. That's correct.

3 Q. When did you do it, Doctor, how long  
4 after October 20?

5 A. I don't know the exact date.

6 Q. Did you do it yesterday?

7 A. I don't know exact date.

8 Q. Did you do it this week?

9 A. I don't recall exact date.

10 Q. Did you do it last week?

11 A. I don't recall.

12 Q. Did you do it within days of October 20?

13 A. I do not recall.

14 Q. Did you discuss the destruction of these  
15 records with any person --

16 A. No.

17 Q. Let me finish the question. Did you  
18 discuss the destruction of these records prior to  
19 your destroying these records?

20 A. No.

21 Q. Did you shred these records in any way?

22 A. No.

23 Q. Did you just toss them in the garbage?

24 A. That's correct.

25 Q. And you knew that these records might be



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1 subpoenaed by me in connection with this case,  
2 correct?

3 A. No.

4 Q. You didn't know that?

5 A. I didn't know that.

6 Q. I thought you just said you throw them  
7 out because you were worried --

8 A. Well --

9 Q. Let me finish the question, Doctor.

10 I thought you said you destroyed these  
11 records because you were worried they were going  
12 to be subpoenaed by me in connection with this  
13 case?

14 A. Well, that was one of the reasons.

15 Q. What are the other reasons?

16 A. I didn't want to keep any unnecessary  
17 records, because you have been subpoenaing all  
18 kinds of things. I realize that keeping all these  
19 records creates more problems, so I decided to get  
20 rid of it.

21 You subpoenaed everything. So I realize  
22 that keeping all these unnecessary records creates  
23 a problem.

24 Q. Let me ask you a question. Have you  
25 ever been challenged in such a way in a case where

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1 all your records have been subpoenaed like this?

2 A. No.

3 Q. So when a challenge such as this comes  
4 about, your response was to destroy the evidence;  
5 is that correct?

6 A. That's correct.

7 Q. Doctor, did you keep any of the records  
8 in your computer?

9 A. No.

10 Q. Did you keep any of the records at your  
11 home?

12 A. No.

13 Q. Doctor, is this the first time that you  
14 have been involved in a civil case where the  
15 person taking your deposition was also charged  
16 with murder?

17 A. I don't recall.

18 Q. Do you recall any other case such as  
19 this, Doctor?

20 A. I do not recall.

21 Q. In any event, this is the first time  
22 that all these records like this have been  
23 subpoenaed, correct?

24 A. I don't recall, most likely.

25 Q. This is the first time you have come up

- Louis Roh, M.D. -

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1 against this; is that right?

2 A. That's correct.

3 Q. And your response to this was to destroy  
4 the evidence?

5 MR. LAWNER: Objection as to form.

6 A. This are my records.

7 Q. You thought those records would be  
8 subpoenaed as evidence, correct?

9 A. No, I didn't say that.

10 Q. You thought those records would be  
11 subpoenaed?

12 A. I felt keeping all those records create  
13 frivolous subpoena issues. So I decided to get  
14 rid of it.

15 Q. You thought they had frivolous subpoena  
16 issues associated with them?

17 A. As far as I am concerned subpoenaing my  
18 index card is frivolous.

19 Q. So you decided to prevent the subpoena  
20 of records that you thought might be frivolous, by  
21 destroying them?

22 A. That's correct.

23 Q. Doctor, did you believe when you  
24 destroyed those records you had anything to hide?

25 A. That's not a record.

- Louis Roh, M.D. -

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1 Q. Doctor, let's assume for purposes of my  
2 question that the index cards we are talking about  
3 are records?

4 A. That's my file.

5 Q. That's your file?

6 A. Yeah, I decided to get rid of it.

7 Q. When you destroyed your file, was it  
8 because you thought you had something to hide?

9 A. No.

10 Q. You didn't think you had anything to  
11 hide?

12 A. I decided to get rid of it so I don't  
13 have to come here and discuss about this thing one  
14 by one.

15 Q. So you were worried that we were going  
16 to start to look into the other cases that you  
17 gave testimony?

18 A. We are talking about three days  
19 testimony. I didn't want to go through that.

20 Q. Were you worried that we were going to  
21 uncover other cases that you had to testify on?

22 A. No.

23 Q. Were you worried that we might discover  
24 certain testimony of yours that you had given in  
25 other cases that it might be contradictory to the

- Louis Roh, M.D. -

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1 testimony --

2 A. No.

3 Q. Let me finish -- to the testimony you  
4 have given in this case?

5 A. No.

6 MR. PISCIONERE: I think it's time to  
7 take a few minute break.

8 (Recess taken.)

9 Q. I am going to instruct you, Doctor, that  
10 you are not to destroy any evidence that in any  
11 way you feel might be associated with your  
12 testimony in this case?

13 A. Such as?

14 Q. Anything, Doctor. I am not limiting it  
15 to anything in the world. Anything.

16 MR. MCCARTY: You can't say that.

17 MR. PISCIONERE: He doesn't want to --

18 MR. SCHWARZ: You can't subpoena --  
19 you issued a subpoena. He produced the  
20 documents. You can't have an all  
21 encompassing subpoena for every single  
22 thing he has ever done in his entire life.

23 MR. PISCIONERE: Maybe what we should  
24 do is get the law secretary in here and  
25 have the Court issue some direction. I

- Louis Roh, M.D. -

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1 think you are right.

2 I will be right back. If you want to  
3 come with me, I am going to get a law  
4 secretary.

5 (Recess taken.)

6 MR. PISCIONERE: Mr. DiBella, before  
7 you begin, if I may, towards the end before  
8 we broke I gave you direction or attempted  
9 to give a direction to Dr. Roh, which upon  
10 reflection I believe is inappropriate and  
11 poorly advised.

12 I want to, for the record, retract the  
13 direction I gave to Dr. Roh, not to destroy  
14 some things, because I don't believe I had  
15 authority to do so. I believe we'll  
16 request the court to give direction to  
17 Dr. Roh.

18 MR. DiBELLA: Did anybody else want to  
19 say anything?

20 My name is Robert DiBella. I am Judge  
21 Scarpino's Principal Court Attorney here in  
22 the Surrogates Court. The attorneys came  
23 to my office for a conference with respect  
24 to some direction to the witness, Dr. Roh,  
25 regarding retention of his records and the

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1 direction not to destroy records, that  
2 Mr. Piscionere feels may be relevant to  
3 issues scheduled to be heard in an  
4 evidentiary hearing before Judge Scarpino.

5 I had an opportunity to speak to Judge  
6 Scarpino about this briefly and after  
7 hearing the attorneys and speaking to the  
8 Judge, it's the Court's feeling,  
9 Doctor, that you should be careful in what  
10 you choose to destroy at this juncture.

11 We don't obviously, as I told you last  
12 time, I asked you to preserve everything in  
13 your file. Apparently our definition of  
14 what that might mean and your definition of  
15 what that might mean, may not be the same.

16 Perhaps those words are susceptible to  
17 different interpretations, but what is  
18 important is that records, whatever form  
19 they may be in, or whatever file or place  
20 they are kept in, that may be relevant to  
21 issues at our hearing, be preserved.

22 That is our broad objection active.  
23 We are not looking to make this any more  
24 difficult than we need to with regard to  
25 your operations.

- Louis Roh, M.D. -

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1           We have a substantial obligation, the  
2           Court does, to protect evidence in a trial  
3           so hopefully the truth can be arrived at,  
4           consistent with our laws and rules.

5           Again, I am reiterating our direction  
6           to you that we want any documents relating,  
7           in any manner, wherever they be and  
8           whatever form they are kept in under your  
9           custody or potential control, to be  
10          preserved.

11          In addition, records that relate to  
12          conclusions that you draw as a medical  
13          examiner in different situations, should be  
14          preserved also.

15          I can't tell you that you need to  
16          preserve every scrap of paper that exists  
17          that you ever touched.

18          THE WITNESS: You have to tell me,  
19          that's true.

20          MR. DiBELLA: I am not making  
21          something that broad. These things are not  
22          static. If you know you are being asked at  
23          the depositions -- you are being deposed on  
24          many separate days now -- about information  
25          or findings or testimony that you may have



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1 given in other cases, about conditions you  
2 observed in this case and they are  
3 different from those or consistent with  
4 those, that could be relevant. It's  
5 possible that could be relevant here.

6 If you said, I think there was an  
7 example given by Mr. Piscionere that a  
8 blunt instrument would not cause a  
9 particular type of condition, but in this  
10 case you feel that it did, there maybe good  
11 and substantial reasons why they are  
12 different and circumstances that may  
13 explain any apparent inconsistencies from  
14 one testimony to another.

15 But if the whole file or record has  
16 been destroyed, then we can never arrive at  
17 the information in the first instance, let  
18 alone the explanation of it. This is our  
19 problem.

20 I am not here sitting in on the  
21 deposition where I have the ability to rule  
22 on a question by question basis and know  
23 where he is going and where he might be  
24 going when you are being questioned.  
25 That's impossible. I don't have the

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1 ability right now to do that.

2 So we are dependent on your  
3 professional judgment in a lot of ways, but  
4 I want you to know that the Court is  
5 considered that any destruction of records  
6 could be very problematic.

7 THE WITNESS: It's not a record. It's  
8 my memo on a piece of paper.

9 MR. DiBELLA: A memo on a piece of  
10 paper is a record.

11 THE WITNESS: This is something I had  
12 let's say ten years ago. I may have jotted  
13 it down on the index card so I can refresh  
14 my memory to testify in court.

15 I usually throw them out. They have  
16 nothing to do with this case and he is  
17 asking, bring all those, my memo cards to  
18 this deposition.

19 If he asked me about a particular,  
20 this particular case, certainly I bring it  
21 in. In fact, he asked me to bring the  
22 index card on this case, so I brought it in  
23 this morning.

24 But he is asking me to bring my memo  
25 pad, jot down on the index card, cases

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1 stretching) back 20, 30 years. These are  
2 my scraps of paper. That's not, of course,  
3 on record. It has nothing to do with this  
4 case.

5 You have to draw the line, which is  
6 relevant, which is not relevant. In my  
7 opinion those cases are not relevant.

8 MR. DiBELLA: It's Judge Scarpino's  
9 opinion, it's the only important one with  
10 regard to what is relevant in this case.  
11 Do you understand that?

12 THE WITNESS: I understand that.

13 MR. DiBELLA: I am not challenging  
14 your medical opinion and I assure you, you  
15 will not going to be challenged to change  
16 Judge Scarpino's legal opinion.

17 You have an attorney. You can seek  
18 the advice of your attorney. If you are  
19 directed by one of these guys, why you feel  
20 there is an inappropriate reason for the  
21 objection, you should seek the advice of  
22 your counsel. It's a confidential  
23 discussion with your counsel. And counsel  
24 will advise you as to what to do.

25 There are procedures that your counsel

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1 can utilize to prevent Mr. Piscionere from  
2 getting things that he demands. They can  
3 move to quash subpoenas. They can move for  
4 further direction from the Court for an  
5 order, limiting, narrowing the discovery,  
6 the request of information. These  
7 procedures have worked well for the courts  
8 for many hundreds of years in all kinds of  
9 cases, but they have to utilized in the  
10 right order.

11 You can't be the person who decides  
12 what you will give and what you will not.  
13 The fact that you don't normally or  
14 sometimes don't keep these cards, is not  
15 the point.

16 If you have saved them and they do  
17 have relevant information, they do exist  
18 and they do have relevant information, it  
19 may be something that Mr. Piscionere is  
20 entitled to, subject to your attorneys  
21 bringing the proper objections.

22 These records can sometimes be viewed  
23 with what we call incamera, where the court  
24 alone looks at them before any disclosure  
25 is had, to determine whether they are

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1 relevant and if we make a decision as to  
2 relevance or there is a question, it can be  
3 appealed. Other people can see what we  
4 have done and determine whether we did the  
5 right thing or the wrong thing. So all  
6 these things occur in a civilized process.

7 Again, I am not going to chastise you  
8 for doing something wrong. I don't feel  
9 you have. The order that we gave before  
10 was limited.

11 But records include all types of  
12 information; computer discs, hard drives,  
13 telephone records, tapes, anything that  
14 records an event.

15 If you had index cards and wrote on  
16 them to refresh your recollection at a  
17 later time, it's a record. It may be a  
18 personal record, it might be a business  
19 records. It might be some other type of  
20 record to qualify, but the broad term of  
21 record will include all types of  
22 communication and information.

23 I don't want to have to give you a  
24 three-page definition on the laws that make  
25 those up. I am just trying to suggest to

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1           you that you need to consult with your  
2           attorney with regard to what Mr. Piscionere  
3           asks you to bring and use their best  
4           judgment in compliance.

5           My boss is not the kind of kind who  
6           likes to punish people, but he insists some  
7           people abide by the rules so that the  
8           process is protected and we can do the best  
9           job we can with the information that we  
10          have. Okay?

11          THE WITNESS: Okay.

12          MR. DiBELLA: So please, with regard  
13          to any further records that are contained,  
14          please make every effort to preserve these  
15          and be very careful not to destroy things  
16          that may have some import and put us in a  
17          worse position later. I would like to  
18          avoid that issue.

19          Does anyone feel that more needs to be  
20          done on this area?

21          MR. PISCIONERE: No.

22          MR. LAWNER: No.

23          MR. PISCIONERE: Thank you.

24          MR. DiBELLA: Okay. Have a good day.  
25          Doctor, I heard you have to leave, have a